

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Docket No.: P26741

F. KNAUSEDER

Confirmation No.: 2541

Serial No.: 09/814,066

Group Art Unit: No. 3673

Filed: June 21, 2001

Examiner: M. Safavi

For: **FLOORING PANELS**

SUPPLEMENTAL REPLY BRIEF UNDER 37 C.F.R. 41.41(a)(1)

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Appeal Brief - Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

This Reply Brief is in response to the Supplemental Examiner's Answer dated July 11, 2007, the period for reply extending until September 11, 2007.

The Examiner maintains the grounds of rejection advanced in the final rejection of claims 1-3, 21-25 and 31-36, and provides arguments traversing the arguments presented by Appellant in the Reply Brief filed on January 22, 2007.

Appellant notes this Reply Brief is being filed under 37 C.F.R. 41.41(a)(1) and is directed to the arguments presented in the Supplemental Examiner's Answer, and therefore must be entered unless the final rejection is withdrawn in response to the instant Supplemental Reply Brief. With regard to this Supplemental Reply Brief, Appellant notes it is addressing points made in the Examiner's Answer and not repeating the arguments set forth in the Appeal Brief.

POINTS OF ARGUMENT

First Issue

On the page 2 of the Supplemental Examiner's Answer, the Examiner characterizes Appellant's argument regarding the definition of "pre-applied adhesive" as not having any specific meaning. This is a mischaracterization of Appellant's argument.

Appellant has clearly argued that the term "pre-applied adhesive" has a specific meaning in the art, that the prior art document to AZEVEDO provides evidence that the term has the meaning which Appellant believes the Examiner is ignoring, and that this specific meaning is fully consistent with Appellant's specification.

Again, in the Supplemental Appeal Brief, Appellant clearly stated the following:

Appellant refers the Board to U.S. Patent No. 4,417,028 to AZEVEDO (a copy of which was attached to the Rule 1.116 Response) which contains an accurate description of such substances. Such substances are typically stable compositions which are prepared and pre-applied to "surfaces prior to the time of assembly, which will remain on the parts during normal storage and shipment, and which will cure upon mating with another part thereby imparting an effective and improved seal or bond." See col. 1, lines 56-68 of AZEVDO. Such substance also typically ensure that the pre-applied parts "can then be shipped or stored for substantial periods of time prior to cure" and are "dry to the touch. Finally, such substances may also have the attribute that "when crushed or ground by a mating surface, cures to a strong bond" (see col. 2, lines 1-22 of AZEVDO). Indeed, these properties, as well as other properties, are specifically acknowledged and noted on pages 5-14 of the instant specification in discussing examples of the types of substances which can be utilized in the invention.

As is clear from the noted language, the term “pre-applied adhesive”, as recited in the claims, has a specific meaning in the art and the Examiner is simply not free to ignore this meaning in favor of one which suits the Examiner.

Second Issue

On the page 2 of the Supplemental Examiner’s Answer, the Examiner asserts that AZEVEDO “has not been entered as evidence on the record.” Appellant respectfully disagrees.

Appellant fully discussed this document in the Rule 1.116 Response filed on November 22, 2005, and indicated that this document was attached. Although a review of Appellant’s records indicates that Appellant neglected to in fact attach a copy of AZEVEDO to the Rule 1.116, the Examiner addressed Appellant’s argument regarding AZEVEDO on page 10 of the Examiner’s Answer, even while asserting that this document was not entered into evidence. Thus, AZEVEDO is part of the record in the instant application.

In sum, Appellant is merely arguing that the meaning of the term “pre-applied adhesive” is defined on pages 5-14 of the instant specification (which discusses examples of the types of substances which can be utilized in the invention) and is consistent with that used in the art, as evidenced by AZEVEDO.

Third Issue

On the page 2 of the Supplemental Examiner’s Answer, the Examiner {P26741 00257612.DOC}

asserts that the meaning of “pre-applied adhesive” as used in the claims is not limited to the type of adhesive disclosed in AZEVEDO, and that this term can be broadly interpreted to read on the adhesive of DE ‘962.

Appellant disagrees. DE ‘962 has not been shown to disclose a “pre-applied adhesive” as recited in the claims. DE ‘962 discloses a contact glue which requires that the mating surfaces “be pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint.” The factory application of an adhesive as taught in DE ‘962 is not a *per se* disclosure of a pre-applied adhesive or pre-applied substance because, as was explained above, a pre-applied adhesive or substance is a type of adhesive or substance which allows the components having the same applied off-site to be connected at a later point in time and which is activated by the very connecting of the joint.

Fourth Issue

On the page 2 of the Supplemental Examiner’s Answer, the Examiner asserts that the meaning of “pre-applied adhesive” as used in the claims is not consistent with the type of adhesive disclosed in AZEVEDO because Appellant’s appealed claim 34 recites both a pre-applied first layer and a pre-applied second layer.

Appellant disagrees. Claim 34 merely requires that the pre-applied adhesive or adhesive substance be applied to both of the mating surfaces, i.e., the tongue

and groove.

In fact, claim 34 covers a preferred embodiment by encompassing a joint between a first mating surface having a pre-applied adhesive and a second mating surface having a pre-applied layer of substance activating an adhesive.

Fifth Issue

On page 3 of the Supplemental Examiner's Answer, the Examiner maintains that DE '962 teaches to use a contact adhesive at the factory and that this contact adhesive is a pre-applied adhesive. Appellant respectfully disagrees and submits that the Examiner is not staying true to what DE '962 actually discloses.

DE '962 discloses a contact glue which requires that the mating surfaces "be pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint." However, the factory application of an adhesive is not a *per se* disclosure of a pre-applied adhesive or pre-applied substance because, as was explained above, a pre-applied adhesive or substance is a type of adhesive or substance which allows the components having the same applied off-site to be connected at a later point in time and which is activated by the very connecting of the joint.

Sixth Issue

On page 3 of the Supplemental Examiner's Answer, the Examiner explains {P26741 00257612.DOC}

that DE '962 teaches to connect the panels at a future point in time after a contact adhesive is applied at the factory.

Appellant respectfully disagrees and submits that the Examiner is not staying true to what DE '962 actually discloses. DE '962 has not been shown to disclose or suggest that the panels are provided with a pre-applied adhesive or substance, much less, doing so in a factory and then connecting the panels together in a non-factory environment.

CONCLUSION

Accordingly, in view of the above-noted arguments (as well as those already of record), the Board is respectfully requested to reverse the Examiner's decision to finally reject claims 1-3 and 8-44 under 35 U.S.C. §§ 102(b) and 103(a), and that the application be remanded to the Examiner for withdrawal of the rejection over the applied documents and an early allowance of all claims on appeal.

Please charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 19-0089.

Respectfully submitted,
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